

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 26, 2016**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2015AP498-CR**

**Cir. Ct. No. 2014CT497**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**GUADALUPE RONZON,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Milwaukee County: JOHN SIEFERT, Judge. *Affirmed.*

¶1 BRASH, J.<sup>1</sup> Guadalupe Ronzon appeals from an amended judgment of conviction entered after she pled guilty to a duty upon striking charge

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

contrary to WIS. STAT. § 346.67(1). Ronzon argues that the evidence presented at the restitution hearing was insufficient as a matter of law to support the circuit court's restitution award of \$8902.80 to the victim, A.E. Ronzon further argues that the circuit court erroneously exercised its discretion in setting restitution because of inconsistencies in A.E.'s testimony at the restitution hearing. We disagree and affirm.

### **BACKGROUND**

¶2 On October 4, 2013, A.E. reported that she was driving on the Lapham Street ramp of I-43 north when she was struck from behind by another vehicle. The vehicle that struck A.E. was driven by Ronzon. The impact caused damage to A.E.'s vehicle and embedded part of Ronzon's vehicle's grill into A.E.'s rear bumper. After the collision, Ronzon stopped briefly then drove off without providing A.E. with any information.

¶3 Approximately thirty (30) minutes after the collision, Ronzon was stopped by the Milwaukee Police. A Milwaukee County Sheriff's deputy responded to the scene of the stop and determined that Ronzon's vehicle was missing a portion of its grill, consistent with that which was embedded in A.E.'s vehicle. Ronzon admitted to being involved in an accident, but indicated she thought she hit a traffic pole. Ronzon also admitted to consuming alcohol and, following field sobriety tests, was cited for operating while under the influence of an intoxicant and for operating with a prohibited alcohol concentration. Ronzon was also charged with duty upon striking occupied or attended vehicle, contrary to WIS. STAT. § 346.67(1).

¶4 On September 10, 2014, Ronzon pled guilty to the duty upon striking charge. On December 22, 2014, the circuit court imposed a sentence and

scheduled a restitution hearing. The restitution hearing was held on February 9, 2015. A.E. was the only witness that testified at the restitution hearing. After hearing A.E.'s testimony, the circuit court set restitution at \$8902.80. This appeal follows.

### DISCUSSION

¶5 We review an order for restitution under the erroneous exercise of discretion standard. *See State v. Haase*, 2006 WI App 86, ¶5, 293 Wis. 2d 322, 716 N.W.2d 526. We will reverse the discretionary decision only if the circuit court applied the wrong legal standard or did not ground its decision on a logical interpretation of the facts. *See State v. Behnke*, 203 Wis. 2d 43, 58, 553 N.W.2d 265 (Ct. App. 1996).

¶6 On appeal, Ronzon argues that there was insufficient evidence to support the circuit court's restitution award of \$8902.80 to A.E. and that the circuit court erroneously exercised its discretion. In response, the State argues that by failing to bring a postconviction motion challenging the restitution order, Ronzon forfeited her ability to raise the issue on appeal. On the merits, the State argues that Ronzon's contention that documentary evidence must be submitted in support of a restitution request is without legal support and that the circuit court did not erroneously exercise its discretion. We briefly address the State's first argument before turning to the merits of Ronzon's appeal.<sup>2</sup>

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<sup>2</sup> The State alternatively argued we should affirm because the restitution hearing transcript was originally omitted from the record on appeal. The record, however, was subsequently supplemented to include the restitution hearing transcript. Therefore, we do not address this argument.

## **I. Ronzon's decision not to bring a postconviction motion**

¶7 The State contends that Ronzon's failure to bring a postconviction motion challenging the restitution order bars her from raising the issue on appeal. In the present case, we disagree.

¶8 WISCONSIN STAT. RULE § 809.30(2)(h) provides that a person pursuing an appeal in a criminal case must first preserve the issue in the trial court, unless the grounds for relief are sufficiency of the evidence or issues previously raised. Here, Ronzon's arguments are: (1) there is insufficient evidence to support the circuit court's restitution award of \$8902.80; and (2) the circuit court erroneously exercised its discretion in setting restitution because there were inconsistencies in A.E.'s testimony.

¶9 The inconsistencies in A.E.'s testimony were adequately addressed at the restitution hearing. As the finder of fact, the circuit court considered A.E.'s testimony and resolved any inconsistencies prior to issuing the restitution order. *See State v. Hahn*, 221 Wis. 2d 670, 683, 586 N.W.2d 5 (Ct. App. 1998). Furthermore, an appellant need not bring a postconviction motion prior to filing a direct appeal in order to preserve a sufficiency of the evidence argument. WIS. STAT. RULE § 809.30(2)(h). Accordingly, we conclude that Ronzon's decision not to bring a postconviction motion in the circuit court challenging the restitution order is not fatal to this appeal.

## **II. The merits of Ronzon's appeal**

¶10 As to the merits of Ronzon's appeal, she argues that the testimony presented at the restitution hearing was insufficient to support the restitution ordered by the circuit court, and that the circuit court erroneously exercised its

discretion in setting restitution because there were inconsistencies in A.E.'s testimony. We disagree.

¶11 WISCONSIN STAT. § 973.20(1r) provides that:

When imposing sentence or ordering probation for any crime ... for which the defendant was convicted, the court, in addition to any other penalty authorized by law, shall order the defendant to make full or partial restitution under this section to any victim of a crime considered at sentencing ... unless the court finds substantial reason not to do so and states the reason on the record....

¶12 Restitution hearings are designed to be informal proceedings, and rules of evidence, other than rules relating to privilege, do not apply. *State v. Madlock*, 230 Wis. 2d 324, 335, 602 N.W.2d 104 (Ct. App. 1999). The victim has the burden of proving the loss sustained by a preponderance of the evidence. WIS. STAT. § 973.20(14)(a). The statute does not mandate what sort of evidence a victim must submit to meet this burden. *See* WIS. STAT. § 973.20.

¶13 In cases of financial hardships, the defendant has the burden of proving their inability to pay by a preponderance of the evidence. WIS. STAT. § 973.20(14)(b); *Madlock*, 230 Wis. 2d at 336. While the sentencing court must consider a defendant's ability to pay when setting restitution, a defendant who fails to present evidence at the restitution hearing of a financial hardship or their inability to pay is subsequently prohibited from arguing for the first time on appeal that the sentencing court failed to consider their financial circumstances. *See State v. Boffer*, 158 Wis. 2d 655, 663, 462 N.W.2d 906 (Ct. App. 1990).

¶14 Restitution is limited by WIS. STAT. § 973.20(5)(a) in two ways. First, there must be a showing that the defendant's criminal activity was a substantial factor in causing pecuniary injury to the victim. *State v. Longmire*,

2004 WI App 90, ¶13, 272 Wis. 2d 759, 681 N.W.2d 534. “[T]he rule in Wisconsin is that if the defendant’s actions were the precipitating cause of the injury complained of, and such injury was the natural consequence of the actions, the defendant is liable....” *Behnke*, 203 Wis. 2d at 59.

¶15 Second, restitution is limited to “special damages.” WIS. STAT. § 973.20(5)(a). This restrains the court from ordering payment for “general damages” intended to “compensate the victim for damages such as pain and suffering, anguish or humiliation which are often experienced by crime victims.” *Behnke*, 203 Wis. 2d at 60. “[T]he ultimate question in deciding whether an item of restitution is ‘special damages’ within the meaning of the statute is whether the item is a readily ascertainable pecuniary expenditure attributable to the defendant’s criminal conduct that could be recovered in any type of civil action....” *State v. Johnson*, 2005 WI App 201, ¶12, 287 Wis. 2d 381, 704 N.W.2d 625.

¶16 As a preliminary matter, Ronzon did not present any evidence at the restitution hearing that she is unable to pay the \$8902.80 due to a financial hardship. Consequently, although Ronzon does not contend in her appeal that the circuit court failed to consider her ability to pay when it set restitution, because she did not present evidence at the restitution hearing suggesting a financial hardship or an inability to pay, this argument is foreclosed to her on appeal.

¶17 Ronzon’s primary argument appears to be that some written verification of loss is required. Ronzon, however, submits no authority, and we find none, that supports that position. Ronzon acknowledges that A.E. testified at the restitution hearing about her losses. Specifically, A.E. testified that her losses include medical bills, lost income from time away from work due to her injuries,

and the damage to her vehicle, which was deemed a total loss. A.E.’s testimony is competent evidence as to the extent of her losses. *See, e.g.*, WIS JI–CRIMINAL 103: Evidence Defined. While receipts or other written documentation would certainly bolster a victim’s position, they are not required.

¶18 Ronzon does not contest that her criminal activity was not a substantial factor in causing A.E.’s pecuniary injury, nor does Ronzon argue the restitution award was for “general damages,” and thus in violation of WIS. STAT. § 973.20(5)(a). Nevertheless, we are satisfied that Ronzon’s criminal activity—that is, striking A.E.’s vehicle from behind and fleeing the scene—was the precipitating cause of A.E.’s pecuniary injuries. *See Behnke*, 203 Wis. 2d at 59. The damage to A.E.’s vehicle, the medical bills A.E. incurred as a result of the injuries she sustained, and A.E.’s lost income from having to miss work to recover from her injuries are all natural consequences of Ronzon striking A.E.’s vehicle from behind and fleeing the scene.

¶19 Moreover, A.E.’s damages are readily ascertainable pecuniary losses attributable to Ronzon’s criminal conduct and therefore constitute “special damages.” *See* WIS. STAT. § 973.20(5)(a); *see also Johnson*, 287 Wis. 2d 381, ¶12. Accordingly, we conclude that A.E. met her burden of proving the financial losses she sustained and that there was sufficient evidence for the circuit court to set restitution at \$8902.80.

¶20 Ronzon also argues that the circuit court erroneously exercised its discretion in setting restitution because of inconsistencies in A.E.’s testimony. While it is correct that A.E.’s testimony contained some inconsistencies, this does not render her statements wholly incredible.

¶21 When testimony is presented at a restitution hearing, it is the judge's role, as the finder of fact, to determine the witness's credibility, to determine what weight should be given to that testimony and any other evidence presented, and to resolve any inconsistencies that occur in the witness's testimony. *See Hahn*, 221 Wis. 2d at 683. The judge, having the opportunity to personally observe the witness, is in the best position to evaluate a witness's credibility. *State v. Benoit*, 83 Wis. 2d 389, 398, 265 N.W.2d 298 (1978).

¶22 Here, the circuit court had the opportunity to listen to the questions presented to A.E. and her answers. The circuit court evaluated A.E.'s testimony and her credibility. To the extent that there were inconsistencies in A.E.'s testimony, the circuit court was in the best position to resolve them. *See id.* Accordingly, we conclude that the circuit court did not erroneously exercise its discretion in setting restitution.

¶23 For the foregoing reasons, we affirm.

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.



